

# EXHIBIT 8

[ECF 1234 filed in the *Rimini II* matter (Case No. 2:14-cv-01699-LRH-CWH)]

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17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 RIMINI STREET, INC., a Nevada  
20 corporation,

21 Plaintiff,

22 v.

23 ORACLE INTERNATIONAL  
24 CORPORATION, a California corporation,  
25 and ORACLE AMERICA, INC., a Delaware  
26 corporation,

27 Defendants.

28 **AND RELATED COUNTERCLAIMS.**

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Case No. 2:14-cv-01699-LRH-CWH

**RIMINI STREET, INC.'S  
OPPOSITION TO ORACLE'S  
MOTION FOR LEAVE TO SUBMIT  
SUPPLEMENTAL BRIEF IN  
SUPPORT OF ORACLE'S MOTION  
TO MODIFY THE PROTECTIVE  
ORDER (ECF NO. 1223)**

1 Oracle seeks leave to file a supplemental brief, claiming two supposed “developments”  
 2 occurred that bear on its Motion to Modify the Protective Order. *See* ECF Nos. 1230 (“Motion  
 3 for Leave”), 1223 (“Motion to Modify”). But “[s]upplemental briefs or sur-replies are highly  
 4 disfavored.” *U.S. v. Wright*, 2015 WL 1323740, at \*4 (D. Nev. Oct. 28, 2015). And neither of  
 5 these “developments” warrant supplemental briefing. Oracle’s proposed supplemental brief—  
 6 like the motion it seeks to supplement—offers no good cause to modify the *Rimini II* protective  
 7 order. *See, e.g., Morrison v. Quest Diagnostics Inc.*, 2016 WL 6246306, at \*3 (D. Nev. Oct. 24,  
 8 2016), *aff’d*, 698 F. App’x 350 (9th Cir. 2017) (declining to consider supplemental evidence  
 9 that made no substantive difference); *see also Chemeon Surface Tech., LLC v. Metalast Int’l,  
 10 Inc.*, 2019 WL 938384, at \*8 (D. Nev. Feb. 26, 2019) (same). To the contrary, it simply further  
 11 illustrates Oracle’s strategic flip-flop: having fought tooth and nail to keep Rimini’s revised  
 12 processes (Process 2.0) out of *Rimini I* and to litigate them solely in *Rimini II*, and having won  
 13 that battle, Oracle now seeks to bring the *Rimini II* evidence back into *Rimini I*, to preempt  
 14 *Rimini II* and deprive Rimini of a jury trial on its new processes. Oracle has not identified any  
 15 evidence—either in *Rimini I* or *Rimini II*—of acts that would arguably constitute contempt of  
 16 the *Rimini I* injunction. Critically, Oracle has failed to explain how discovery materials from  
 17 *Rimini II* are relevant to a *Rimini I* contempt proceeding, particularly given that fact discovery  
 18 in *Rimini II* closed in March 2018—eight months before the *Rimini I* injunction went into effect.  
 19 The Court should deny Oracle’s Motion for Leave, as well as Oracle’s Motion to Modify the  
 20 Protective Order.

21 **First**, Oracle claims that Rimini’s counsel’s statements at the April 4, 2019 hearing  
 22 before Judge Ferenbach in the *Rimini I* case are inconsistent with Rimini’s position on the  
 23 instant motion. Oracle is wrong; there is no inconsistency.

24 As explained in Rimini’s opposition (ECF No. 1228), discovery regarding Rimini’s  
 25 Process 2.0—which was never adjudicated in *Rimini I*—cannot be relevant to a contempt  
 26 proceeding. It is black-letter law that an injunction must be “narrowly tailored … to remedy  
 27 only the specific harms shown by the plaintiffs.” *Price v. City of Stockton*, 390 F.3d 1105, 1117  
 28 (9th Cir. 2004) (emphasis added); *see also 4 Nimmer on Copyright*, § 14.06[C][1][a] (“[T]he

1 scope of the injunction should be coterminous with the infringement.”). The injunction cannot,  
 2 as a matter of law, cover conduct not specifically adjudicated in *Rimini I*. *Price*, 390 F.3d at  
 3 1117; *see also Mulcahy v. Cheetah Learning LLC*, 386 F.3d 849, 852 & n.1 (8th Cir. 2004)  
 4 (vacating provision of injunction covering “course materials that were not before the court”).  
 5 It was thus Oracle’s burden to demonstrate that there are “significant questions” that Rimini  
 6 continues to engage in conduct *actually adjudicated in Rimini I*. *See Social Servs. v. Leavitt*,  
 7 523 F.3d 1025, 1034 (9th Cir. 2008). As Rimini argued in its opposition, Oracle has failed to  
 8 do that. ECF No. 1228 at 4. Oracle has steadfastly refused to identify any evidence from  
 9 *Rimini I* or *Rimini II* that it contends constitutes contempt of the *Rimini I* injunction. Rimini’s  
 10 counsel simply reiterated this point at the hearing, explaining that after years of expensive and  
 11 voluminous discovery into Rimini’s entire business, Oracle has keen insight into Rimini’s  
 12 processes and should be able to tell Rimini—even if only in informal meet and confer  
 13 correspondence—what conduct adjudicated in *Rimini I* it alleges Rimini continues. *See, e.g.*,  
 14 Richardson Decl., Ex. A at 25:3–16 (“Oracle has had full discovery from the beginning of 2015  
 15 to the beginning of 2018 … and they don’t have a single thing that they can bring to the Court  
 16 and say, ‘Here, from all this discovery we’ve already done we have found evidence, therefore  
 17 we need to see if you’re still doing it.’”). Despite Rimini’s repeated requests, Oracle has refused  
 18 to do so. There is no inconsistency between Rimini’s counsel’s statements and Rimini’s  
 19 position in its opposition brief, and thus no basis for supplementation.

20 Oracle has recognized that any *Rimini I* contempt proceeding could only cover  
 21 adjudicated conduct when it argued to the Court that the injunction it sought was “not a ruling  
 22 on the merits of the issues in dispute in *Rimini I*” and only would restrain Rimini from  
 23 “continuing to commit the infringement that this Court and the jury have already determined to  
 24 constitute copyright infringement.” *Rimini I*, ECF No. 1117 at 20 n.3; *see also* ECF No. 1209  
 25 at 4–9 (chronicling Oracle’s assurances to the Court). Indeed, Oracle successfully sought to  
 26 keep Rimini’s Process 2.0 out of *Rimini I* and in *Rimini II*—by arguing that Process 2.0 was  
 27 “irrelevant to any liability issue at trial” in *Rimini I*. *Rimini I*, ECF No. 646 at 5 (Oracle stating  
 28 that “[t]he legality of the new 2014 model will be the subject of Rimini’s new lawsuit [*Rimini II*]

1 ... and therefore any evidence related to the 2014 support model *is irrelevant to any liability*  
 2 *issue at trial* [in *Rimini I*.]" (emphasis added)); *id.* at 1 (Oracle arguing that all "evidence and  
 3 argument relating to Rimini's alleged new support model" should be "exclude[d]" from *Rimini*  
 4 *I*; "*the legality of that purported model will be determined*" in *Rimini II*) (emphasis added).  
 5 Having taken that position, Oracle should be estopped from using *Rimini II* material in any  
 6 briefing or proceeding to enforce the *Rimini I* injunction. *See* ECF No. 1228 at 5.

7 **Second**, Oracle claims that Rimini's refusal to withdraw its opposition and agree to  
 8 Oracle's motion is somehow a "development" warranting supplemental briefing. ECF  
 9 No. 1230 at 2. Obviously, that is not a development at all. Oracle also complains that,  
 10 following the April 4 hearing before Judge Ferenbach, in a good faith effort to resolve the  
 11 parties' dispute, Rimini proposed a reasonable compromise that would enable Oracle to engage  
 12 in some "limited ... scouting" consistent with Judge Ferenbach's guidance. Richardson Decl.  
 13 Ex. A at 57:8–15. Specifically, Rimini offered to "assess whether modification of the protective  
 14 order is warranted" if Oracle would "identify specific discovery materials [from *Rimini II*] that  
 15 it wishes to use in *Rimini I*, and explain their relevance to this proceeding," including by  
 16 showing that the discovery is focused on "processes that ... were adjudicated in *Rimini I*."  
 17 Richardson Decl. Ex. E at 4. In a classic case of "no good deed goes unpunished," Oracle took  
 18 Rimini's willingness to strike a compromise as an excuse to run to this Court without advance  
 19 notice or an attempt to further discuss the issue with Rimini. Oracle not only refused to even  
 20 consider Rimini's proposal, it filed its Motion for Leave just hours later, claiming that Rimini's  
 21 openness to discussion conceded the relevance of *Rimini II* discovery material. Rimini  
 22 conceded no such thing, and again reiterates that Oracle has a burden to identify some conduct  
 23 that was at issue and adjudicated in *Rimini I* that it believes Rimini engaged in after  
 24 November 6, 2018 (after the temporary stay of the injunction was lifted), and challenges Oracle  
 25 to identify anything. That Oracle cannot do so only underscores the irrelevance of *Rimini II*  
 26 discovery to *Rimini I*.

1 Oracle's mischaracterization of the record in its Motion for Leave and proposed  
 2 supplemental briefing illustrates that Oracle is not interested in reasonable discovery in  
 3 *Rimini I*. Indeed, Oracle already sought—and has been granted—permission to seek some  
 4 limited discovery into Rimini's current processes in that case. *See* Richardson Decl. Ex. A at  
 5 21:6–9 (Oracle's counsel explaining that Oracle's motion to reopen *Rimini I* discovery was  
 6 “narrowly tailored” to target the post-injunction period); *id.* at 57:8–15 (the Court ruling Oracle  
 7 could “take some limited discovery … you know, do some scouting”). Oracle can learn what  
 8 it needs to know about Rimini's processes and injunction compliance through discovery in  
 9 *Rimini I* without modifying the *Rimini II* protective order. Moreover, if Oracle had identified  
 10 any evidence in *Rimini II* discovery materials of conduct actually *adjudicated* in *Rimini I* that  
 11 was in violation of the *Rimini I* injunction, it can and should identify it to Rimini and this Court.  
 12 Absent this evidence, there is no good cause to modify the protective order. *See* ECF No. 1228  
 13 at 5–6. Likewise, if Oracle has not identified any evidence of allegedly contemptuous conduct  
 14 (adjudicated in *Rimini I*) in the voluminous *Rimini II* discovery materials, there is also no good  
 15 cause to modify the *Rimini II* protective order.

16 Oracle's strategy in seeking to use all *Rimini II* discovery in *Rimini I* shows that Oracle's  
 17 aim is to backtrack from the position it took when seeking the injunction, assuring the Court  
 18 that it was “not asking now for a ruling on the merits of the issues in dispute in *Rimini II*,” and  
 19 instead was asking “the Court for a permanent injunction restraining Rimini from continuing to  
 20 commit the infringement that *this Court and the jury have already determined to constitute*  
 21 *copyright infringement*” in *Rimini I*. *Rimini I*, ECF No. 1117 at 20 n.3 (emphasis added).  
 22 Rimini accurately predicted that Oracle would seek to litigate the core issues of the *Rimini II*  
 23 lawsuit in a contempt proceeding in *Rimini I*. ECF No. 1228, Ex. A at 5–6. Oracle's  
 24 supplemental briefing—which does not substantively impact the issues in Oracle's Motion to  
 25 Modify the Protective Order—doubles down on this strategy, and should be rejected.

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1 Rimini respectfully requests that the Court deny Oracle's Motion for Leave and Oracle's  
2 Motion to Modify the Protective Order.

3  
4 Dated: April 30, 2019

5 GIBSON, DUNN & CRUTCHER LLP  
6

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this date, I caused to be electronically uploaded a true and correct copy in Adobe “pdf” format of the above document to the United States District Court’s Case Management and Electronic Case Filing (CM/ECF) system. After the electronic filing of a document, service is deemed complete upon transmission of the Notice of Electronic Filing (“NEF”) to the registered CM/ECF users. All counsel of record are registered users.

DATED: April 30, 2019

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